RIO ARRIBA, NEW MEXICO, BOARD OF COUNTY COMMISSIONERS
v.
ACTING SOUTHWEST REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 00-27-A Decided February 6, 2001

Appeal from a decision to take a tract of land into trust for the Jicarilla Apache Tribe.

Vacated and remanded.

1. Indians: Lands: Trust Acquisitions

Where the Bureau of Indian Affairs includes an improper assumption in its analysis of a trust acquisition request, and the Board of Indian Appeals cannot determine whether, absent the improper assumption, the Bureau would have reached the same conclusion, the Board must remand the matter to the Bureau for further consideration.

2. Indians: Lands: Trust Acquisitions

In a case where (1) a state or local government collects taxes on activities or transactions on property proposed for trust acquisition; (2) that government asserts a loss of revenue from such taxes as a result of a proposed trust acquisition; and (3) a reasonably accurate determination can be made as to the amount of taxes that would be lost to the state or local government as a result of the trust acquisition, the Bureau of Indian Affairs should consider the asserted loss in its analysis under 25 C.F.R. § 151.10(e) (1999).

APPEARANCES: Lorenzo Valdez, its County Manager, and Dennis Luchetti, Esq., Espanola, New Mexico, for Appellant; Elizabeth L. Rodke, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Albuquerque, New Mexico, for the Regional Director; Daniel I.S.J. Rey-Bear, Esq., and Wayne H. Bladh, Esq., Albuquerque, New Mexico, for the Jicarilla Apache Tribe.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Rio Arriba County, New Mexico, Board of County Commissioners seeks review of an October 28, 1999, decision of the Acting Southwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), to take into trust for the Jicarilla Apache Tribe (Tribe) approximately 32,069.8 acres in Rio Arriba County, New Mexico, subject to receipt of a satisfactory title examination. 1/

For the reasons discussed below, the Board vacates the Regional Director's decision and remands this matter to him for further consideration.

Background

The property at issue here, now known as the Lodge at Chama (Lodge at Chama property or the property), was purchased by the Tribe on June 5, 1995, from the Trustee in Bankruptcy for the Chama Land and Cattle Company. The property is approximately 1,290 feet from the Willow Creek Ranch portion of the Tribe's reservation. 2/ The Tribe, through its Running Elk Corporation, operates a working ranch and a hunting, fishing and outdoor sports resort on the property.

On May 7, 1996, the Tribe requested that BIA take the Lodge at Chama property into trust. Prior to the Tribe's request))in fact, prior to completion of the Tribe's purchase of the property))Appellant wrote to the Secretary of the Interior, objecting to trust acquisition of

1/ On Jan. 16, 2001, BIA published a revision of its trust acquisition regulations in 25 C.F.R. Part 151. 66 Fed. Reg. 3452. That revision, scheduled to go into effect on Feb. 15, 2001, is presumably subject to the 60-day postponement required by the Jan. 20, 2001, memorandum from the President's Chief of Staff. 66 Fed. Reg. 7702 (Jan. 24, 2001).

The Board considers this appeal under the regulations in effect at the time the Regional Director issued his decision. All citations to 25 C.F.R. Part 151 are to the 1999 edition.

2/ At the time it submitted its trust acquisition request, the Tribe believed the land to be about 1-1/2 miles from the Willow Creek Ranch. See Tribe's May 7, 1996, request at 1. BIA analyzed the Tribe's request under that assumption. The Tribe later discovered, through a new survey, that the land is only 1,290 feet from the Willow Creek Ranch.

The Willow Creek Ranch was taken into trust for the Tribe in 1995. At the time of the Regional Director's Oct. 28, 1999, decision, a request for reservation status for that property was pending in BIA's Central Office in Washington, D.C. On Mar. 21, 2000, the Assistant Secretary - Indian Affairs proclaimed the Willow Creek Ranch to be a part of the Tribe's reservation. 65 Fed. Reg. 16628 (Mar. 29, 2000).

the property. 3/ By letters dated June 8, 1995, and June 23, 1995, BIA's Director of Trust Responsibilities and the Albuquerque Area Director (now the Southwest Regional Director) responded on behalf of the Secretary. Both officials advised Appellant that, if the Tribe sought trust acquisition of the property, Appellant's concerns would be taken into consideration.

Upon receipt of the Tribe's trust acquisition request, the Superintendent, Jicarilla Agency, BIA, gave notice of the request to Appellant and to the State of New Mexico. Appellant responded on June 14, 1996, referring to its earlier letter to the Secretary and stating: "We would like the Secretary to consider carefully where the withdrawal of private lands is taking this county. The county already has 70% of its land area in federal or state ownership. To further this process is not in the best interest of the people of the county." In response to two of the specific inquiries made in the Superintendent's notice letter, Appellant stated:

> 1. The annual amount of property taxes currently levied on the property.
>
> The total annual assessed property taxes on the Chama Land and Cattle Company was $20,872. This was based on an old assessment. A new assessment would have been done on sale price and comparable sales in the area. The land value assessment which is $6 million. The property sold for $25 million so the new tax assessment would have increased significantly.
>
> 2. Any special assessments, and amounts thereof, which are currently assessed against the property.

3/ Appellant stated:

"Within the past twelve (12) years, several large tracts of land within our County have been purchased by the [Tribe]. The sum of these totals is an estimated 82,215 acres. Of these, roughly 70 percent have been placed on 'Trust' status and are currently on 'Reservation' status thus eliminating these lands from the tax base altogether."
Appellant's Apr. 24, 1995, Letter at 1.

With its opening brief in this appeal, the Tribe submits a Dec. 9, 1999, letter it received from the Superintendent, Jicarilla Agency, which shows acreage of its purchased tracts as follows: El Poso Ranch - 26,421.38 acres (in trust); Theis Ranch - 54,843.44 acres (in trust); Willow Creek Ranch - 14,138.98 (in trust); Gomez Ranch - 5,679.08 acres (trust acquisition pending); Lodge at Chama property - 32,069.80 (trust acquisition pending); Mossman Ranch - 4,137.00 acres (trust acquisition pending).
Exhibit 1 to Tribe's Opening Brief.

All of the listed tracts are within Rio Arriba County. The El Poso Ranch was taken into trust in 1986, the Theis Ranch in 1988 and, as stated in footnote 2, the Willow Creek Ranch in 1995.

> A livestock value assessment is levied based on the value of the stock grazed. The latest value on record was $507,397. A fee is charged on a per animal basis. Gross receipts [were] also generated on the game park activities of the ranch and these will also be lost to the county, this income to the county was $25,000 in 1994. This figure would be based on .0538% of gross revenues.

Appellant's June 14, 1996, Letter at 1. In further comments, Appellant stated that the loss of tax revenues would impact the delivery of services to all county residents. It also expressed concern that the property was not contiguous to the Tribe's reservation.

The Governor of New Mexico also responded to the Superintendent's notice letter, stating in part:

> The content of the application does not indicate what the [Tribe] intends to do with this land. If this property is intended to be used for gaming, I strongly oppose the expansion of any trust lands for such purposes. It would set a precedent in the state that I am on record as opposing.

Governor's June 5, 1996, Letter at 1. The Governor provided no specific information on property taxes and special assessments, stating that most of these taxes were dealt with at the local level.

On October 28, 1999, the Regional Director issued a letter stating his intent to grant the Tribe's trust acquisition request. On the same day, he issued a supporting memorandum, in which he analyzed the Tribe's request under the criteria in 25 U.S.C. §§ 151.10 and 151.11 and discussed the comments made by Appellant and the Governor. In the letter of intent, he stated:

> I find that this acquisition is in the best interest of the [Tribe], thereby promoting tribal self-determination and economic development. The Superintendent stated the purposes for which this land will be used are for big game hunting and grazing purposes along with providing economic benefits and employment opportunities. Based upon these statements, at this time I also make a finding that this acquisition is not for gaming purposes.

Regional Director's Oct. 28, 1999, Letter of Intent at 2.

The Regional Director sent copies of the letter of intent and the supporting memorandum to Appellant and the Governor. Appellant then appealed to the Board.

Discussion and Conclusions

As to the standard of review applicable here, the Board repeats the statement it made in Town of Ignacio, Colorado v. Albuquerque Area Director, 34 IBIA 37 (1999):

> Decisions as to whether to acquire land in trust are discretionary. In reviewing BIA discretionary decisions, the Board does not substitute its judgment for BIA's. Instead, it reviews such decisions "to determine whether BIA gave proper consideration to all legal prerequisites to the exercise of its discretionary authority, including any limitations on its discretion established in regulations." City of Eagle Butte, South Dakota v. Aberdeen Area Director, 17 IBIA 192, 196, 96 I.D. 328, 330 (1989). See also McAlpine v. United States, 112 F. 3d 1429 (10th Cir. 1997); City of Lincoln City, Oregon v. Portland Area Director, 33 IBIA 102, 103-04 (1999), and cases cited therein. In regard to BIA discretionary decisions, the appellant bears the burden of proving that the Area Director did not properly exercise his discretion. Lincoln City, 33 IBIA at 104, and cases cited therein.
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> However, the Board has full authority to review any legal challenges that are raised in a trust acquisition case. In regard to BIA's legal determinations, the appellant bears the burden of proving that the Area Director's decision was in error or not supported by substantial evidence. Lincoln City, 33 IBIA at 104.

35 IBIA at 38-39.

Appellant contends that the trust acquisition at issue here would violate Article VIII of the Treaty of Guadalupe Hidalgo, 9 Stat. 922 (Feb. 2, 1848), and Article II, sec. 5, of the Constitution of New Mexico. These are legal contentions, subject to full review by the Board.

Article VIII of the Treaty of Guadalupe Hidalgo provides in part:

> In the said [i.e., formerly Mexican] territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

Article II, sec. 5, of the New Mexico Constitution provides: "The rights, privileges and immunities, civil, political and religious guaranteed to the people of New Mexico by the Treaty of Guadalupe Hidalgo shall be preserved inviolate."

Appellant argues:

> The [property at issue here] is located within the Tierra Amarilla Grant, which was given by the Mexican Government to the Tierra Amarilla Land Grant heirs in 1836 for the purpose of sustaining a community settlement in northern New Mexico and southern Colorado. Therefore, any such action considered by the United States Government must be examined as to whether the said action restricts the rights of the descendants of those Mexicans who held property rights within the Tierra Amarilla Grant at the time of the Treaty.
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> In addition, the New Mexico State Constitution is required to uphold the Treaty of Guadalupe Hidalgo. * * * Currently, legislation in Congress is pending which will mandate a study that will examine whether the United States of America has met Treaty obligations in New Mexico.

Notice of Appeal at 2-3.

In response to Appellant's argument, the Tribe cites decisions of the United States Court of Appeals for the Tenth Circuit and the New Mexico Supreme Court which show that the Tierra Amarilla land grant was confirmed to a private individual, Francisco Martinez, by the Act of June 21, 1860, 12 Stat. 71, and patented to him on February 21, 1881. These decisions establish beyond any question that the grant was a private grant, rather than a community grant. See Martinez v. Rivera, 196 F.2d 192, 194 (10th Cir.), cert. denied, 344 U.S. 828 (1952). See also Flores v. Bruesselbach, 149 F.2d 616 (10th Cir. 1945); H.N.D. Land Co. v. Suazo, 44 N.M. 547, 105 P.2d 744 (1940). Further, as the Tenth Circuit noted in Martinez, id., the Supreme Court has held that "the action of Congress [in confirming land grants under the Treaty of Guadalupe Hidalgo] was conclusive as to the validity and the character or nature of the grant, and was not subject to review by the Supreme Court of the United States or any other judicial tribunal." See, e.g., Tameling v. United States Freehold and Emigration Co., 93 U.S. 644 (1876).

The Tribe and the Regional Director acknowledge that legislation was introduced in the 106th Congress concerning certain land claims arising out of the Treaty of Guadalupe Hidalgo (H.R. 505, 106th Cong., 1st Sess. (1999); S. 2022, 106th Cong., 2d Sess. (2000)) but point out that neither bill was enacted. Further, the Tribe contends that, as both bills concerned only community land grant claims, neither would have affected the private Tierra Amarilla grant even had it been enacted.

There is no doubt that the Lodge at Chama property has been privately owned since 1881. Nothing in the materials before the Board shows that the property is subject to any continuing obligations under the Treaty of Guadalupe Hidalgo, the Constitution of New

Mexico, or any Federal legislation concerning the Treaty of Guadalupe Hidalgo that is relevant to this trust acquisition decision.

The Board finds that Appellant has failed to show that this trust acquisition would violate the Treaty of Guadalupe Hidalgo, the Constitution of New Mexico, or any Federal law.

Appellant also contends that the Regional Director's decision constitutes harmful precedent for New Mexico in that it allows trust acquisition of land that is not contiguous to a reservation.

The regulations in 25 C.F.R. Part 151 plainly allow for trust acquisition of land that is not contiguous to an Indian reservation (see sec. 151.11), as does the underlying statute, 25 U.S.C. § 465. 4/ Thus, to the extent Appellant may have intended to challenge this trust acquisition as lacking legal authorization, it cannot succeed.

It appears more likely that Appellant intended this argument to be a part of its challenge to the Regional Director's analysis under the criteria in 25 C.F.R. §§ 151.10 and 151.11. Indeed, Appellant specifically disagrees with the Regional Director's analysis under subsections 151.10(b) ("The need of the * * * tribe for additional land"); (c) ("The purposes for which the land will be used"); (e) ("[T]he impact on the State and its political subdivisions resulting from the removal of the lands from the tax rolls"); and (f) ("Jurisdictional problems and potential conflicts of land use which may arise").

Under the standard of review discussed above, BIA's analysis under these criteria is subject to limited review by the Board because it is based upon the exercise of discretion by BIA. However, the Board may review BIA's decision to ensure that BIA took into consideration all facts which were, or should have been, known to it and which were critical to an analysis under 25 C.F.R. §§ 151.10 and 151.11. Village of Ruidoso, New Mexico v. Albuquerque Area Director, 32 IBIA 130 (1998).

4/ 25 C.F.R. § 151.11 establishes criteria for evaluating tribal trust acquisition requests "when the land is located outside of and noncontiguous to the tribe's reservation."

25 U.S.C. § 465 provides:

"The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians."

In most of its contentions, Appellant merely expresses disagreement with BIA's analysis and/or makes assertions unsupported by any evidence. To that extent, Appellant has not carried its burden of proving that the Regional Director did not properly exercise his discretion.

In one respect, however, Appellant's argument identifies a problem with BIA's analysis which the Board may address. That argument concerns BIA's analysis under 25 C.F.R. § 151.10(e) ("[T]he impact on the State and its political subdivisions resulting from the removal of the lands from the tax rolls").

In the memorandum supporting his decision, the Regional Director stated:

> [T]he previous owners of the Lodge did go bankrupt under the combined state and county system of taxation and regulation of the operation. Therefore, while the County is properly concerned about lost tax revenues, it is entirely possible that the taxes and assessments the County is concerned about losing were too much for the property to handle and contributed to its demise as a privately owned enterprise. The County is not going to lose taxes and assessments that are not going to be paid anyway because the owner went bankrupt and lost the property. We note that when the Tribe purchased this property out of the bankruptcy court, the State of New Mexico was the other top bidder to purchase the property. If the State had been the successful high bidder for the property the State would not have been paying property taxes to the County. So either way with the Tribe or the State as the owner, the payment of property taxes would have stopped. This satisfies the impact requirement in Section 151.10(e) as incorporated into Section 151.11(a).

Regional Director's Oct. 28, 1999, Memorandum at 6.

It does not appear that, at the time he issued his decision, the Regional Director had any specific information before him concerning the reasons for the previous owner's bankruptcy. After the decision was issued, the Tribe's attorney wrote to the Regional Director, stating that he had verified with the Bankruptcy Trustee that the previous owner's bankruptcy had been caused by an unprofitable project in Dallas, Texas, and that operations on the Lodge at Chama property had always been profitable. Tribal Attorney's Nov. 5, 1999, Letter.

Lacking information as to the reasons for the previous owner's bankruptcy, the Regional Director erred in speculating on those reasons, and particularly in stating that the owner went "bankrupt under the combined state and county system of taxation and regulation of the operation."

A more serious error is the Regional Director's assumption that Appellant would not be able to collect property taxes whether or not the property was taken into trust, either because the previous owner was bankrupt or because the State of New Mexico might have purchased the property. In fact, neither point is relevant. Neither the previous owner nor the State owned the property at the time the Tribe applied to have it taken into trust. 5/ Rather, the property was owned by the Tribe, which has paid property taxes since it purchased the property. Thus, it is clear that trust acquisition of this property would result in a loss of property tax revenue to Appellant.

In a discussion preceding the above-quoted passage, the Regional Director stated:

> According to the County's June 14, 1996, letter, the total assessed property taxes on the property [were] $20,872. The County said there was a livestock value assessment based on the value of the stock grazed and gross receipts [were] also generated on the game and park activities of the Ranch. To balance this tax loss, the purchase of this Ranch and Lodge by the Tribe and the continuation of the operation and eventual expansion of the luxury resort, big game hunting, fishing, other recreational activities and cattle grazing should have a profound impact in generating revenues and jobs for northern Rio Arriba County and the community of Chama.

Regional Director's Oct. 28, 1999, memorandum at 5. This discussion indicates that the Regional Director was aware of a property tax loss to Appellant. Nevertheless, he then went on to suggest that there would be no property tax loss.

[1] It is clearly possible that the Regional Director's ultimate conclusion was influenced by the improper assumption discussed above. The Board cannot determine whether, absent that improper assumption, he would have reached the same conclusion. Under the standard of review discussed above, the Board must vacate the Regional Director's decision and remand this matter to him for further consideration. Upon remand, the Regional Director shall base his analysis under 25 C.F.R. § 151.10(e), as it concerns property taxes, upon taxes paid by the Tribe on the Lodge at Chama property.

5/ According to materials submitted by the Tribe during the course of this appeal, the Regional Director erred in stating that the State of New Mexico bid on the property. The Tribe's materials show that, although the New Mexico Legislature enacted legislation authorizing a bid, the Governor vetoed it because he considered the means of financing unacceptable. Governor's Senate Executive Message No. 16, Mar. 9, 1995.

This is not a critical error. Whether or not the State bid on the property, it never became the owner. That is the only point relevant here.

There are discrepancies in the various statements Appellant has made concerning the amount of property taxes assessed on the property.

In its November 22, 1999, notice of appeal to the Board, Appellant stated:

> [T]he County currently receives approximately $21,000 in property taxes from the said property. Although, the current assessment is below the actual assessment being that the property sold for $26 million and would have an assessed value of 85 percent of market value. The actual tax assessment for the parcel * * * should be at the amount of $123,981.

Notice of Appeal at 5.

Appellant's statement that it receives approximately $21,000 in property taxes is consistent with the statement it made in its June 14, 1996, letter to BIA. However, both statements appear inconsistent with a document included with Appellant's opening brief. That document is a February 29, 2000, computer printout attached to a February 28, 2000, letter from Appellant's Chief Appraiser to Appellant's County Manager. The printout shows that the Tribe has paid property taxes in the following amounts: 1996 - $16,149.41; 1997 - $15,664.06; 1998 - $16,032.62; and 1999 - $15,100.61. Thus, according to the printout, the Tribe paid approximately $5,000 less in each of those years than Appellant stated in its June 14, 1996, letter to BIA and its notice of appeal to the Board. Appellant offers no explanation for the apparent discrepancies in the documents it submits.

The Chief Appraiser's February 28, 2000, letter states that the Lodge at Chama property was assessed for the 2000 tax year at $21,116,745 (full value) and $7,038,915 (taxable value) and that, at the applicable tax rate, taxes in the amount of $151,914 would be assessed for 2000. This figure is more than $25,000 higher than the amount stated in Appellant's November 1999 notice of appeal and ten times the amount of taxes paid by the Tribe in 1999.

The Tribe has submitted the notice of valuation it received in June 2000 for the 2000 tax year. The notice shows a full value of $21,301,191 and a taxable value of $7,100,397. By contrast, the Tribe's 1999 valuation (which resulted in taxes of $15,100.61) showed a full value of $2,199,378 and a taxable value of $733,126.

In Avoyelles Parish, Louisiana, Police Jury v. Eastern Area Director, 34 IBIA 149 (1999), the Board rejected the appellant's attempt to present tax information on appeal that was different from the information it had furnished to BIA during BIA's consideration of a trust acquisition request. The Board stated: "To the extent that the Parish Assessor supplied incorrect or incomplete information in response to the Area Director's request for information,

Appellant cannot now complain." 34 IBIA at 152. The Board noted in that case that the Parish did not change the tax status of the property until after the Area Director issued his decision and that the Area Director's decision was based upon tax information that was accurate at the time the decision was issued.

In Avoyelles Parish, the Parish had said nothing in its submission to BIA about a possible change in the tax assessment. Thus, BIA had no way of knowing that the information being furnished might not accurately reflect the true tax impact of the trust acquisition on the Parish. In this case, Appellant indicated in its June 14, 1996, comments to BIA that a new assessment would be prepared, which would result in a significant increase in taxes. Thus BIA was on notice that the taxes might increase. Nevertheless, as of October 28, 1999, when the Regional Director issued his decision, the new assessment described in Appellant's June 14, 1996, letter had not yet been made. 6/

It is perhaps arguable, in light of the amount of time that passed between BIA's solicitation of comments and its decision, that BIA should have offered Appellant and the Governor an opportunity to update their comments. However, it is also arguable that it was Appellant's responsibility to notify BIA of any significant change in the information it had furnished previously. In any event, as just stated, there had been no significant change in the tax assessment on the Lodge at Chama property as of the date the Regional Director issued his decision. Thus, as in Avoyelles Parish, the property tax information before the Regional Director on October 28, 1999, was more or less accurate. 7/

The Board remanded Avoyelles Parish to the Eastern Area Director for reconsideration of certain jurisdictional matters, but specifically allowed his original analysis on the tax impact issue to stand. Thus, the Eastern Area Director was not required to take the appellant's new tax information into consideration. Here, the Board remands for reconsideration of the tax impact issue itself. Thus, there appears to be more reason in this case to allow consideration of updated property tax information. However, any such updated information should be based upon taxes actually assessed and paid. Further, the Regional Director should take into account any appeals the Tribe may have filed concerning the new valuation or property taxes based upon that valuation.

Another tax impact issue is apparent here. That issue concerns New Mexico gross receipts taxes.

6/ As in Avoyelles Parish, the new assessment in this case was not made until after the Regional Director issued his decision.

7/ This is true here to the extent that the $5,000 discrepancy noted above is a minor one when compared to the stunning increase in taxes later announced by Appellant.

The Tribe has taken the position in this appeal that New Mexico gross receipts taxes could not be collected on various activities involving the Tribe on the Lodge at Chama property if the property were in trust status. Tribe's Motion for Expedited Consideration and Appeal Bond at 6-7. It contends that the law has developed sufficiently to establish this point conclusively. Tribe's Reply in Support of Motion at 8.

Appellant stated in its June 14, 1996, letter that it expected to lose gross receipts taxes upon trust acquisition of the Lodge at Chama property and that it had received $25,000 in such taxes from the property in 1994. The Regional Director mentioned the gross receipts tax briefly in his October 28, 1999, memorandum (see above-quoted passage from page 5 of the memorandum) and suggested that he was taking the loss claimed by Appellant into consideration.

Because this matter must be remanded for reconsideration of the tax impact question as a whole, it is appropriate for the Regional Director to revisit the gross receipts tax question in light of the arguments made in this appeal.

Where a state or local government has collected gross receipts or similar taxes from activities on property proposed for trust acquisition, but will no longer be able to collect such taxes once the property has been taken into trust, there is undeniably a financial "impact on the State and its political subdivisions." However, even where a state or local government can show that it has previously collected such taxes on the property, BIA is likely to find it difficult, if not impossible, to estimate with any certainty the amount of revenue the state or local government would lose as a result of a trust acquisition. This is because, among other things, such a tax may apply in the case of some transactions but not others, or in the case of transactions involving some parties but not others. The legal analysis is a complicated one, as is apparent from the many court decisions in the area. Nothing in 25 C.F.R. Part 151 requires that BIA engage in a complex legal analysis concerning the taxability of activities conducted on land after it is taken into trust. Avoyelles Parish, 34 IBIA at 154-55.

In this case, there may not be a need for such a complex analysis. There has been considerable litigation concerning the applicability of the New Mexico gross receipts tax to activities on Indian lands in New Mexico. E.g., Ramah Navajo School Board, Inc. v. New Mexico Bureau of Revenue, 458 U.S. 832 (1982); Mescalero Apache Tribe v. O'Cheskey, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959 (1981); New Mexico Taxation and Revenue Dep't v. Laguna Industries, 855 P.2d 127 (1993). Further, as the Tribe points out, the State has addressed the question in the part of its Administrative Code dealing with the gross receipts tax. See 3 NMAC 2.4.9, "Federal preemption; transactions with Indian tribes."

[2] There is no doubt that gross receipts taxes have been collected with respect to activities on the Lodge at Chama property. Appellant has asserted a loss of gross receipts tax revenues resulting from the trust acquisition. If the law concerning that tax is clear, as the Tribe contends, BIA may well be able, based either on the estimates already furnished by the Tribe or on updated information, to make a reliable estimate of the revenue loss to Appellant and the State.

Therefore, upon remand, BIA shall request the assistance of the Solicitor's Office in assessing whether the law concerning the New Mexico gross receipts tax is sufficiently clear, with respect to the activities presently taxed on the Lodge at Chama property, to allow for a reasonably accurate determination of the amount of gross receipts taxes that would be lost to Appellant and the State of New Mexico as a result of this trust acquisition. If BIA concludes, upon the advice of the Solicitor's Office, that the law is sufficiently clear in this regard, it shall take the revenue loss to Appellant and the State into account in analyzing the "impact on the State and its political subdivisions" under 25 C.F.R. § 151.10(e). 8/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's October 28, 1999, decision is vacated, and this matter is remanded to him for further consideration in accordance with this decision. 9/

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

8/ Of the amount the Tribe estimated it would pay in gross receipts taxes in 2000, the greatest amount by far was attributed to construction. Presumably, construction will be a finite activity. If so, it would be reasonable and appropriate for BIA to take that fact into consideration.

9/ Ideally, this dispute would be resolved by agreement between Appellant, the Tribe, the State, and BIA. If the Regional Director believes that mediation might assist these parties to reach agreement, he is invited to contact the Board for information about the Department's Alternative Dispute Resolution program.